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PATENT & TRADEMARK OFFICE

FLORA.1200

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Robert Kleiman John C. Hill Sambasivarao Koritala	Atty Docket No.	FLORA.1200
Serial No.	**10/683,787**	Group Art Unit:	**1621**
Filed:	10/10/2003	Examiner:	**Karl J. Puttlitz**
TITLE:	**METHOD FOR IMPROVING THE SPREADING PROPERTIES OF FATTY ALCOHOL COMPOUNDS [...]**		

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on:

Date: 11/15/2006

By:

Printed Name: DOUGLAS W GILMORE

AFFIDAVIT
PURSUANT TO 37 C.F.R. §1.132

Assistant Commissioner of Patents
Alexandria, VA 22313-1450

Dear Assistant Commissioner:

STATE OF ARIZONA)
:
COUNTY OF MARICOPA)

I, David Ashley, being duly sworn, depose and say as follows:

I received a Bachelors of Science in Chemistry from Arizona State University in May of 1987. I have been employed by International Flora Technologies, Inc., (Technical Department) since 2003 where I serve as a chemist. Previously, I was employed at Safety-Kleen Systems, Inc., where I served as Compliance Manager from 2002-2003. I have also worked in various technical and managerial capacities at Onyx Environmental Services (Salesco Systems USA, Inc.), ADFlex Solutions Inc., and Revlon Consumer Products Corporation. I have over fourteen years of experience in analytical chemistry, environmental, health, and safety management. I am a Certified Hazardous Material Manager, and a member of the American Chemical Society.

I have undertaken an extensive review of United States Patent Application Serial No. 10/683,787. Based on the totality of my skill and experience, the broadest interpretation of United States Patent Application Serial No. 10/683,787 is that the disclosed invention is directed to improving the spreading properties of fatty alcohol containing cosmetic compositions for those fatty alcohols whose spreading properties may be substantially improved upon acylation in accordance with the disclosed methodology. It is important to note that United States Patent Application Serial No. 10/683,787 is limited to only those fatty alcohols which demonstrate improvement of spreading properties. It is also important to note that not all fatty alcohols will demonstrate improved spreading properties upon acylation. For example, consider the following data:

	Melting Point of Fatty ROH Acetate (°C)
Jojoba	52.0 - 43.4
Behenyl	47.1 - 48.2
Lignoceryl	53.4 - 54.1

Upon acylation, the fatty alcohol components of at least Jojoba, Behenyl and Lignoceryl oils demonstrate melting points well above room temperature (*i.e.*, above 20°C). Therefore, the acylation of these representative fatty alcohols would **not** demonstrate improved spreading properties in cosmetic formulations. Consequently, it may be seen that the improvement of spreading properties upon acylation of a specific fatty alcohol (as compared with the baseline spreading properties of the non-acylated material) is **not** an inherent consequence of acylation of a fatty alcohol. Accordingly, skilled artisans would not be capable of expecting or predicting the improvement of spreading properties for any random acylated fatty alcohol cosmetic formulation product since spreading property improvement is **not** an inherent consequence of acylation of any or all fatty alcohols.

The invention referenced in United States Patent Application Serial No. 10/683,787 is directed to topical cosmetic formulations that employ acylated fatty alcohol compositions for only those fatty alcohol materials that demonstrate improved spreading properties in the resulting cosmetic formulation product. That is to say, United States Patent Application Serial No. 10/683,787 discloses a methodology for producing a cosmetic formulation that demonstrates improved spreading properties (as compared with corresponding non-acylated fatty alcohol cosmetic formulation material) for fatty alcohols whose spreading properties are substantially improved upon acylation.

While it is generally well-known that alcohols (as well as other compounds) may be subjected to chemical acylation (as well as a variety of other synthetic chemical processes), what is not known and could not have been predicted is that for certain fatty alcohols, the resulting product provides dramatically improved spreading properties in topical cosmetic formulations. Upon reviewing United States Patent Application Serial No. 10/683,787, based on the totality of my skill and experience, I am surprised and would not have expected the significant increase in spreadability of the acylated compounds as disclosed in United States Patent Application Serial No. 10/683,787.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. I further declare that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the subject patent application or any patent issued thereon.

I further declare that I have received no special compensation or consideration for making this affidavit, nor have I been in any way told, either directly or by implication or inference, by anyone that my employment by International Flora Technologies, Inc., or my professional advancement or other matters of personal or professional interest to me depend in any way on whether or not I make this affidavit or the content thereof. I further declare that I make this affidavit of my own free will and choice without any duress or influence of any kind, believing fully in the truth of the statements made by myself herein.

David Ashley

I, CAROL Hynes, a Notary Public in and for the County and State aforesaid, do hereby certify that David Ashley, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that he signed, sealed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 9 day of Nov 2006.

My commission expires on Nov. 29, 2007

SEAL

OFFICIAL SEAL
CAROL HYNES
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Nov. 29, 2007